IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PATRICK MCCRACKEN, Administrator of the Estate of JEFFREY ALLEN MCCRACKEN,	:	**CIVIL ACTION NO. 3:19-CV-1063**
	:	**(Judge Conner)**
Plaintiff	:	
v.	:	
FULTON COUNTY, *et al.*,	:	
Defendants	:	

ORDER

AND NOW, this 8th day of February, 2021, upon consideration of the report (Doc. 98) of Chief Magistrate Judge Karoline Mehalchick, recommending that the court deny the motion (Doc. 75) to dismiss or, in the alternative, for summary judgment filed by the PrimeCare Medical, Inc., defendants ("PrimeCare defendants") in the above-captioned action, wherein Judge Mehalchick specifically recommends that we decline to exercise our discretion to convert the PrimeCare defendants' motion to dismiss into a motion for summary judgment given that discovery has not yet begun, and recommends further that we deny the PrimeCare defendants' motion to dismiss because plaintiff has sufficiently cured the pleading deficiencies previously identified by the undersigned, (see Doc. 98 at 6-15; see also Doc. 66), and the court noting that the PrimeCare defendants have objected to the report, (see Docs. 99, 101); see also FED. R. CIV. P. 72(b)(2), and that plaintiff has filed a response (Doc. 102) thereto, and following *de novo* review of the contested portions of the report, E.E.O.C. v. City of Long Branch, 866 F.3d 93, 99 (3d Cir. 2017)

(quoting 28 U.S.C. § 636(b)(1)), and affording "reasoned consideration" to the uncontested portions, id. (quoting Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987)), the court finding Judge Mehalchick's analysis to be well-reasoned and fully supported by the record and the applicable decisional law, and finding defendants' objections (Docs. 99, 101) to be without merit for the reasons set forth in the report and herein,[1] it is hereby ORDERED that:

1. The report (Doc. 98) of Chief Magistrate Judge Mehalchick is ADOPTED.

2. The PrimeCare defendants' motion (Doc. 75) to dismiss, or in the alternative, for summary judgment is GRANTED to the extent that plaintiff's request for punitive damages on Count VII is STRICKEN from the second amended complaint. The motion (Doc. 75) is otherwise DENIED.

3. This matter is REMANDED to Chief Magistrate Judge Mehalchick for further proceedings.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner
United States District Judge
Middle District of Pennsylvania

[1] The principal deficiency identified in the court's prior opinion was that plaintiff had failed to plead facts, rather than conclusory allegations, establishing that the PrimeCare defendants knew or should have known that decedent Jeffrey Allen McCracken was suicidal at or around the time of intake. (See Doc. 66 at 13-14). The second amended complaint cures this deficiency: it alleges that these defendants were in possession of arrest paperwork which explicitly stated that McCracken had attempted suicide shortly before his arrest. (See Doc. 68 ¶¶ 79-80). The PrimeCare defendants rejoin that this allegation is "simply false," (Doc. 101 at 14), and cite evidence submitted with their would-be summary judgment motion in attempt to refute plaintiff's allegation, (see id. at 15). Defendants' argument is one of proof, not of pleading. As noted *supra*, we agree with Judge Mehalchick that conversion to summary judgment at this stage would be premature. The claims raised here are highly fact-intensive and full discovery is necessary to test their merit. Accordingly, we will deny the PrimeCare defendants' motion to dismiss, and deny their request to treat that motion as one for summary judgment.